

**IN THE UNITED DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

JANE DOE, et al.

Plaintiff

-VS-

DEAN BOLAND**Defendant**

CASE NO. 1:07CV2787

JUDGE DAN AARON POLSTER

MOTION TO QUASH SUBPOENA

Now comes Attorney Donald J. Malarcik and respectfully requests that this Court quash the subpoena issued by Plaintiff's counsel in the above-captioned matter. Plaintiff's attorney issued a subpoena requesting all documents, reports, etc. prepared by Dean Boland. The reasons for this Motion to Quash are set forth fully below and in the attached Affidavit incorporated herein.

On July 30, 2003, Judge Jane Bond of the Summit County Court of Common Pleas appointed Attorney Malarcik to represent Bryan S. Sparks in Case No.: 2002 12 3669. (See attached Journal Entry). Attorney Malarcik motioned the Court for expert assistance. Judge Bond appointed Dean Boland to assist Attorney Malarcik in his representation of Bryan S. Sparks. (See Motion for Expert Fees and Expenses filed May 3, 2004 and Journal



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paid to Dean Boland).

All exhibits and images prepared by Dean Boland offered in the Bryan Sparks case were copied onto a defense exhibit. Defendant's Exhibit "O". By motion, dated April 13, 2004, (attached hereto), Attorney Malarcik offered Defendant's Exhibit "O" into the record. The Court admitted Defendant's Exhibit "O". Attorney Malarcik does not have a copy of Defendant's Exhibit "O" in his possession.

Further, pursuant to Court Order, Attorney Malarcik was instructed to deliver any pornographic image evidence provided to Attorney Malarcik by the State or in his possession. Attorney Malarcik complied with said Court Order and outlined the return of all such evidence in the Notice of Return of Criminal Evidence Motion filed May 3, 2004 (attached hereto). To the best of my recollection, the remaining documents prepared by Attorney Dean Boland constitute the following:

- A. Dean Boland's resume;
- B. Twelve page document outlining different areas of the law regarding child pornography;
- C. Nine page document given to aid in the cross-examination of the State's expert witness, Detective Stan Smith;
- D. Seven page document outlining the proposed direct examination of Dean Boldland;
- E. One page document quoting Revised Code Section 2907.322 with notes from Mr. Boland;
- F. Fee Agreement dated March 14, 2004 from Boland Consulting;



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Ohio Statutory definition of child pornography. Page two of this document contains two
images created by Mr. Boland and provided to illustrate his points;

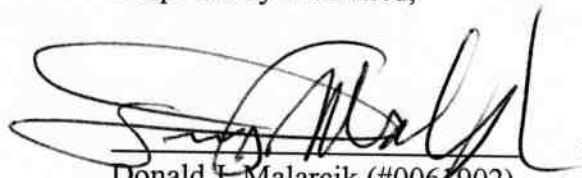
H. Six page report prepared by Mr. Boland dated March 20, 2004, discussing
the issues previously referenced in state and federal case law; and

I. Six page report prepared by Mr. Boland with summaries of important federal
cases regarding child pornography dated March 23, 2004.

Attorney Malarcik submits that other than the images turned over to the Court
pursuant to Court Order, the remaining documents in Attorney Malarcik's possession
[referenced above as A - I.] constitute work product and attorney/client privileged material.
These items were prepared by Mr. Boland to assist Attorney Malarcik in either the direct
examination of Mr. Boland, the cross-examination of the State's expert witness, or to
discuss and analyze relevant state and federal case law regarding the
constitutionality/legality of the child pornographic prosecution of Mr. Bryan Sparks.

Due in large part to Attorney Boland's expert assistance on behalf of Bryan S.
Sparks, Mr. Sparks was acquitted of all counts which pertained to child pornography.

Respectfully submitted,



Donald J. Malarcik (#0061902)
Attorney for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U.S. mail to **Joshua Rosenbaum, Esq.**, Attorney for Plaintiff, 230 Third Street, Suite 104, Elyria, Ohio 44035 and **Dean Boland, Esq.**, Attorney for Defendant, 18123 Sloane Avenue, Lakewood, Ohio 44107 on this 21st day of July, 2008.



Donald J. Malarcik
Attorney for Defendant



DONALD J.
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Attorney at Law

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**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

DIANA ZALECKI

JANUARY

03

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CR 02 12 3669

THE STATE OF OHIO
CLERK OF COURTS
vs.

No. _____

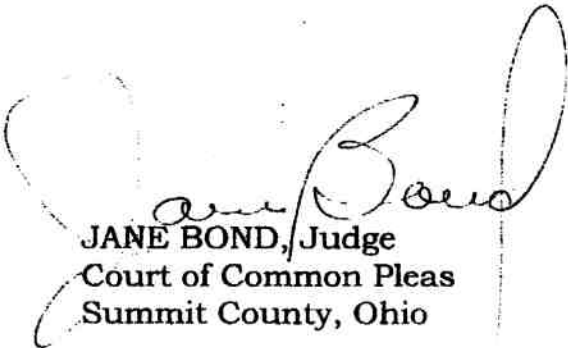
JOURNAL ENTRY

BRYAN S. SPARKS

THIS DAY, to-wit: The 30th day of January, A.D., 2003, thereupon, it appearing to the Court that the Defendant is in indigent circumstances and unable to employ counsel, the Court hereby appoints Attorney DON MALARCIK as counsel for the Defendant in this case.

IT IS FURTHER ORDERED that a pretrial be set in this case for February 10, 2003 at 1:00 P.M.

APPROVED:
January 31, 2003
Jng9



JANE BOND, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Beth Aronson/Shelby Woodall
Criminal Assignment
Attorney Don Malarcik
Booking

DOCKET # 12-3669
 JULY -3 2003
 SUMMIT COUNTY
 CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
 SUMMIT COUNTY, OHIO

STATE OF OHIO)	CASE NO. CR-2002-12-3669
)	
Plaintiff)	JUDGE JANE BOND
)	
-vs-)	
)	
BRYAN S. SPARKS)	<u>MOTION FOR EXPERT</u>
)	<u>FEES AND EXPENSES</u>
Defendant)	

Now comes the Defendant, **BRYAN S. SPARKS**, by and through counsel, and respectfully requests that this Court order payment of expert witness fees and reimbursement of expenses in the above captioned case. Attorney Malarcik submits three (3) requests for Court paid experts and one (1) request for reimbursement of expenses.

1. **Computer Investigation and Evidence, Inc.:** On April 15, 2003 this Court granted Defendant's Motion for an Expert Witness and appointed Don Wochna of Computer Investigation and Evidence as an expert witness for the Defendant and authorized payment of \$1,000.00 for Mr. Wochna. Counsel has submitted an invoice from Computer Investigation and Evidence for services provided to date which totals \$2,020.50. This amount includes reimbursement for two (2) 40 Gig Hard Drives at \$129.00 each, which were turned over to the Court pursuant to this Court's order.

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Counsel notes that Mr. Wochna has discounted his fees in the above captioned case by \$787.50. Mr. Wochna was crucial to the defense of this Mr. Sparks. Mr. Wochna met with counsel on numerous occasions and at counsel's request, analyzed two (2) hard drives with over 91,000 images in the above captioned case, prepared two (2) reports for counsel's review and testified at trial.

Wherefore, counsel respectfully requests that this Court order payment to Computer Investigation and Evidence in the amount of **\$2,020.50**.

2. **Dean Boland**: Mr. Boland was enlisted in this case to develop defenses and provide assistance, testimony and exhibits to demonstrate the inability to distinguish between actual and virtual child pornography. Mr. Boland had numerous discussions with defense counsel regarding this novel area of the law. Additionally, Mr. Boland researched and provided to defense counsel case law argument and outlines for direct and cross examination of key witnesses.

Mr. Boland traveled from Cleveland to the Summit County Courthouse on three (3) separate occasions to testify at the Daubert hearing as well as at trial. Mr. Boland's assistance was crucial in developing a defense, researching the law and presenting the Court with testimony and exhibits.

Wherefore, counsel respectfully requests that this Court award expert witness fees in the amount of **\$7,458.75** based on the attached invoice wherein Mr. Boland worked 33.15 hours at the hourly rate of \$225.00.

3. **Tom Fields**: On July 17, 2003 this Court appointed Tom Fields as an investigator for the defense and authorized Mr. Fields to be paid at the rate of \$50.00 per hour and bill up to twenty (20) hours to the Court. Mr. Fields submitted an invoice for 61.5 hours at \$50.00 per

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hour and \$128.45 reimbursement for traveling 367 miles at \$0.35 per mile, total invoice amount \$3,203.45.

Mr. Fields also was instrumental to the defense in this matter. Initially, Mr. Fields researched both alleged rape counts involving Amber and Brandon. Mr. Fields traveled to the alleged location of the Amber rape, interviewed witnesses and photographed the interior of the home where the alleged rape occurred.

As the case drew closer to trial, Mr. Fields was instrumental in identifying and locating key defense witnesses outside of Summit County. Mr. Fields traveled to Wayne and Stark County, located witnesses, served them with a subpoena for testimony, and interviewed witnesses in preparation for trial. Mr. Fields also met with Mr. Sparks at the Summit County Jail on numerous occasions.

Without the assistance of Mr. Fields, a competent defense could not have been mounted.

Wherefore, counsel respectfully requests that this Court order payment to Tom Fields in the amount of **\$3,203.45** in the above captioned case.

4. **Unreimbursed expenses:** Attorney Malarcik submits three (3) invoices from Exact Duplicating Services. The first invoice dated September 19, 2003 is for copying eight hundred eighty eight (888) pages of letters Mr. Sparks allegedly wrote to various persons. These letters were handed over to the Summit County Prosecutors Office. Attorney Malarcik made arrangements with Prosecutor Ragsdale to pick up said eight hundred eighty eight (888) pages of letters, copy them, and return the originals to the Prosecutor's Office. Mr. Malarcik did so at an expense of \$239.76. Counsel paid for this, as well as four (4) copies of color photos in the Sparks case, at \$5.40, with check number 1337 in the amount of \$245.16, (attached hereto.)

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The last invoice, dated March 18, 2004 for \$54.00 was for a 30 x 30 poster board enlargement of the definition of virtual child pornography which counsel submitted to the Court as Defense Exhibit G. Counsel paid for this exhibit with check number 1402, a copy of which is attached hereto.

Wherefore, counsel respectfully requests that this Court order reimbursement for expenses in the amount of \$299.16 in the above captioned case.

Respectfully submitted,



Donald J. Malarcik (#0061902)
Attorney for Defendant
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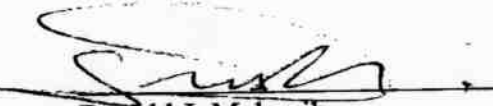
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered via regular U.S. Mail to **Susan Ragsdale, Assistant Prosecuting Attorney**, 53 University Avenue, Akron, Ohio 44308 on this 29th day of April, 2004.

DONALD J.
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Donald J. Malarcik
Attorney for Defendant

2004 MAY -6 PM 12:37

SUMMIT COUNTY
CLERK OF COURTS

ORDER

Donald J. Malarcik
Attorney for Defendant
1 Cascade Plaza, 20th Floor
Akron, Ohio 44308
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JUDGE JANE BOND

DIANA ZALESKI

2004 APR 13 PM 1:27

SUMMIT COUNTY
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

STATE OF OHIO

Plaintiff

-VS-

BRYAN S. SPARKS

Defendant

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CASE NO. CR-2002-12-3669

JUDGE JANE BOND

MOTION TO ADMIT
DEFENDANT'S EXHIBIT O

Now comes the Defendant, **BRYAN S. SPARKS**, by and through counsel and respectfully requests that this Court admit Defendant's Exhibit "O". A copy of this exhibit has been provided to the Court and prosecution. During the testimony of Defendant's expert witness, Dean Boland, defense counsel indicated on the record that Mr. Boland would produce a CD of the exhibits identified at trial. Additionally, the Court has admitted Defendant's Exhibit "F", a CD of images identified by Defendant's expert (Dean Boland) at the Daubert hearing and during trial testimony.

As indicated previously on the record, Defendant's Exhibit "F" is only accessible if the user has Adobe Photo Shop software on their computer. Accordingly, defense counsel indicated that he would have Mr. Boland convert all images identified at the Daubert hearing and trial to "jpg" files and provide both the Court and the prosecution with a copy of all

**DONALD J.
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Attorney at Law

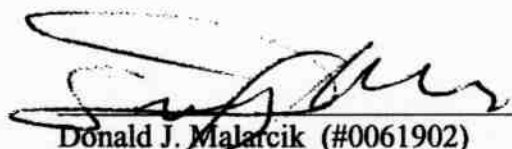
**GORMAN, MAL ARCTIK
AND PIERCE**
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images identified at the Daubert hearing and trial. Defendant's Exhibit "O" contains just that (i.e. all images identified during the Daubert hearing and trial testimony converted to jpg). Defendant's Exhibit "O" can now be viewed and accessed on any computer.

Accordingly, Defendant respectfully requests that this Court admit Defendant's Exhibit "O".

Respectfully submitted,



Donald J. Malarcik (#0061902)
Attorney for Defendant
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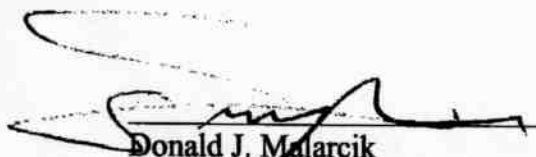
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered to **Susan Ragsdale, Assistant Prosecuting Attorney**, 53 University Avenue, Akron, Ohio 44308 on this 13th day of April, 2004.

DONALD J.
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Donald J. Malarcik
Attorney for Defendant

7. State's Exhibit number 39.
8. State's Exhibit number 40.
9. Two (2) reports from Dr. Steiner dated January 30, 2004 at 10:42 a.m.... wherein Dr. Steiner examined a "Maxtor hard drive".

These items constitute all pornographic image evidence provided by the State or Mr. Wochna in the possession of Attorney Malarcik.

Respectfully submitted,



Donald J. Malarcik (#0061902)
Attorney for Defendant
1 Cascade Plaza, 20th Floor
Akron, Ohio 44308-1114
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered via regular U.S. Mail to **Susan Ragsdale, Assistant Prosecuting Attorney**, 53 University Avenue, Akron, Ohio 44308 on this 30th day of April, 2004.



Donald J. Malarcik
Attorney for Defendant

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JUDGE DAN AARON POLSTER

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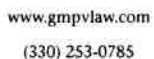
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(4) At the conclusion of the trial, Dean Boland was awarded \$4,000.00 expert



witness fees on May 6, 2004 by Judge Jane Bond of the Summit County Court of Common Pleas.

(5) Dean Boland testified on behalf of the defense at a Daubert hearing as well as at trial. During the testimony, Attorney Boland produced a number of exhibits. Mr. Boland converted all images identified at the Daubert hearing and trial to an exhibit and labeled the disk as Defendant's Exhibit "O".

(6) Defendant's Exhibit "O" contained all images identified during the Daubert hearing and trial testimony in *State v. Bryan Sparks*, Case No. 02 12 3669 and was admitted into evidence.

(7) Pursuant to Court Order, Attorney Malarcik was required to return any pornographic images provided by the State or created by experts. On May 3, 2004, I returned said evidence and filed a "Notice of Return of Criminal Evidence."

(8) To the best of my knowledge, Defendant's Exhibit "O" and the items identified in the Notice of Return of Criminal Evidence constitute all images, CDs and other alleged child pornographic material presented or developed during my representation of Bryan S. Sparks.

(9) The only remaining items prepared by Mr. Boland in my possession could be best described as follows:

- A. Dean Boland's resume;
- B. Twelve page document outlining different areas of the law regarding child pornography;
- C. Nine page document given to aid in the cross-examination of the State's expert witness, Detective Stan Smith;
- D. Seven page document outlining the proposed direct examination of Dean



DONALD J.
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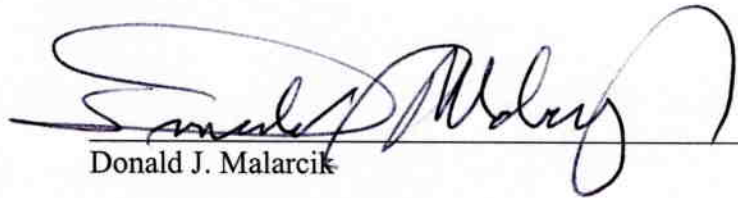
Attorney at Law

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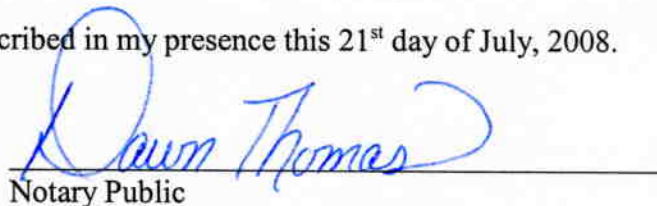
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- E. One page document quoting Revised Code Section 2907.322 with notes from Mr. Boland;
- F. Fee Agreement dated March 14, 2004 from Boland Consulting;
- G. Two page document emailed on March 15, 2004 with notes regarding the Ohio Statutory definition of child pornography. Page two of this document contains two images created by Mr. Boland to illustrate his points;
- H. Six page report prepared by Mr. Boland dated March 20, 2004, discussing issues previously raised in state and federal case law; and
- I. Six page report prepared by Mr. Boland with summaries of important federal cases regarding child pornography dated March 23, 2004.

FURTHER AFFIANT SAYETH NAUGHT.


Donald J. Malarcik

Sworn to before me and subscribed in my presence this 21st day of July, 2008.


Notary Public



DAWN THOMAS, Notary Public
State of Ohio
My Commission Expires Jan. 3, 2010



DONALD J.
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